

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

United States of America,)	Case No. 14-CR-358 (DSD/JJK)
)	
Plaintiff,)	
)	
vs.)	Minneapolis, Minnesota
)	November 13, 2014
Roxanne Merrell,)	10:15 a.m.
)	
Defendant.)	
)	

BEFORE **THE HONORABLE JANIE S. MAYERON**
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

CONTINUED DETENTION HEARING

APPEARANCES:

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P R O C E E D I N G S

IN OPEN COURT

THE COURT: Good morning, everyone. We are here today in the continuation of the Detention Hearing in the matter of the United States of America versus Roxanne Merrell, Court File No. 14-358.

If counsel could identify themselves, starting first with counsel for the United States?

MS. BUZICKY: Good morning, Your Honor, Katharine Buzicky on behalf of the United States.

THE COURT: Good morning. And on behalf of Ms. Merrell?

MS. ELLIS: Deborah Ellis, Your Honor, appearing on behalf of Ms. Merrell, who is present.

THE COURT: All right. As I indicated, we are here today on the continuation of the detention hearing. As the parties recall, I continued this hearing so that I could gather more information regarding the State Court proceedings which has been provided to me via Ms. Ellis to Ms. Perez from Pretrial Services, and also to give Counsel for the parties the opportunity to brief the issue as to whether there are any legal constraints on me in terms of allowing Ms. Merrell to return to the home and be in the presence of her minor daughter. And Counsel have responded to that and provided me with those briefs, and I have those,

1 as well. So, I am prepared to proceed at this time.

2 Let me just ask, I know that Ms. Ellis has a
3 witness who is here to testify on Ms. Merrell's behalf.
4 Before I do that, let me ask whether the Government has
5 anything further it wishes to say right now before we hear
6 that testimony or any further evidence it wishes to put on?

7 MS. BUZICKY: Very briefly, Your Honor, I just
8 wanted to alert the Court to one --

9 THE COURT: Why don't you come over to the podium,
10 please?

11 MS. BUZICKY: Your Honor, prior to the hearing
12 beginning I talked with Ms. Ellis regarding the use of the
13 names of the children that are involved in the case. And as
14 the Court is aware there are two minor children that Ms.
15 Merrell has care and control over. And we agreed amongst us
16 that we would refer to Minor A as the female child and Minor
17 C for the male child.

18 THE COURT: Okay.

19 MS. BUZICKY: I just wanted to let the Court know.
20 And I think that will obviate any need for redactions or
21 other kinds of motions regarding sealing and things like
22 that.

23 THE COURT: So Minor A for the female child and
24 Minor C for the male child?

25 MS. BUZICKY: Yes, Your Honor.

1 THE COURT: All right, thank you. And Ms. Ellis,
2 would you like to proceed?

3 MS. ELLIS: At this time we would like to call
4 Geri Robbins to the stand.

5 THE COURT: All right. Ms. Robbins, you are going
6 to come on over here to the left of me.

7 THE WITNESS: Here?

8 THE COURT: So -- yes, come through there. There
9 you go. And then make your way around here to this box
10 thank you. If you would raise your right hand before you
11 get seated?

12 (Witness sworn.)

13 Thank you. Please be seated and state your full
14 name, spelling your last name please.

15 THE WITNESS: My first name is Geri, my middle
16 name is Jean, my last name is Robbins, R-o-b-b-i-n-s. The
17 first name Geri is G-e-r-i.

18 THE COURT: Thank you. All right, Ms. Ellis, you
19 may proceed.

20 **GERI ROBBINS**

21 **DIRECT EXAMINATION**

22 **BY MS. ELLIS:**

23 Q. Thank you, Your Honor.

24 Ms. Robbins, by whom are you employed?

25 A. I am employed by the State of Minnesota.

1 Q. In what capacity?

2 A. I am a guardian ad litem.

3 Q. And how long have you served as a guardian ad litem for
4 the State of Minnesota?

5 A. Since April of 2012.

6 Q. What is your educational background?

7 A. My Bachelor's Degree is in Social Work and my Master's
8 Degree is in Social Work.

9 Q. Before serving the State of Minnesota as a guardian ad
10 litem, where did you work?

11 A. Actually, I was home with my children just doing some
12 mom jobs at a school, but I have a former history of child
13 protection with St. Louis County; and a medical social
14 worker at Hennepin County Medical Center.

15 Q. Do you know Roxanne Merrell?

16 A. Yes, I do.

17 Q. How do you know Ms. Merrell?

18 A. I was assigned as the guardian ad litem for her children
19 when the CHIPS Petition was brought to court.

20 Q. When you talk about CHIPS, am I correct that is a child
21 in need of protection or services?

22 A. Yes.

23 Q. That is a State Court proceeding?

24 A. That is in Washington County through Community Services.

25 Q. Do you recall the month that the CHIPS proceeding was

1 initiated in Washington County?

2 A. I was assigned in April of 2014, so in or around that
3 time, maybe late March.

4 Q. And as a guardian ad litem, what are your duties and
5 responsibilities?

6 A. Well, I work for the state and I am to advocate for the
7 best interest of the children and I am to make a
8 recommendation through the court about things that would be
9 helpful to them or the family.

10 Q. Have you been involved in the CHIPS proceeding since it
11 was initiated?

12 A. Yes, I have.

13 Q. And who else has been involved in that proceeding?

14 A. There has been a number of providers. There is a child
15 protection social worker from Washington County Community
16 Services. The children and Ms. Merrell all had
17 psychological evals by Campus Health. The children have had
18 individual therapy.

19 There is an in-home therapist that the family has
20 been getting services from for several months. And then, of
21 course, I do my investigation, also.

22 Q. Are there also lawyers involved for Washington County?

23 A. Yes, there is the County Attorney that represents
24 Community Services, and then Ms. Merrell has an attorney for
25 the CHIPS case. And the oldest child, Child A has an

1 attorney.

2 Q. Now, are you aware of what the basis was for the initial
3 petition seeking services for the children?

4 A. Yes, I do.

5 Q. What is that?

6 A. My understanding was that Ms. Merrell took what would be
7 considered pornographic pictures of Child A from the neck
8 down. No face shot, no way to identify. And that she did
9 this to earn some money. The money was never paid to her.
10 The man who she knew already, had a prior relationship with,
11 knew him in some capacity, was in trouble.

12 The police went to his computer and that is how
13 they found the picture. The picture was actually taken
14 maybe three, almost four years ago. And Child A, until the
15 CHIPS Petition, had no idea that anything -- that any
16 picture or any abuse had occurred.

17 Q. And since you have been involved, have you learned of
18 any other allegations of pornographic photographs being
19 taken?

20 A. No.

21 Q. Have you learned of any other alleged sexual misconduct?

22 A. No.

23 Q. Have you in your capacity as guardian ad litem written
24 reports for the Court on a regular basis?

25 A. Yes, I have.

1 Q. And have you also appeared at court proceedings in the
2 CHIPS matter?

3 A. Yes, every hearing I have been at.

4 Q. Am I correct that those hearings happen about every 45
5 days or thereabouts?

6 A. Yes.

7 Q. And before those hearings would you provide a report
8 that goes to the Judge via lawyers, and the lawyers?

9 A. Yes.

10 Q. And in addition to the lawyers you said that there was a
11 community service representative. Is that person a child
12 protection worker?

13 A. Yes.

14 Q. Has there been a child protection worker involved in
15 this case since you have been involved?

16 A. Yes, even before.

17 Q. Okay. And was there a time that Ms. Merrell was removed
18 from the home where she was living with her children?

19 A. Yes.

20 Q. Do you recall approximately how long she was out of the
21 home?

22 A. I think maybe three weeks. I am guessing. It wasn't a
23 real long time, several weeks probably.

24 Q. How did it come about that she was permitted to move
25 back into the house?

1 A. Community Services did an investigation. And what they
2 determined was that the children would not be in danger if
3 she was residing with them. And so she had been living with
4 her grandmother, the children's great grandmother. So then
5 she came back to the home that is owned by her mother, the
6 children's grandmother.

7 Q. So, community service, the child protection worker
8 determined that the children wouldn't be in danger if she
9 returned home?

10 A. Yes.

11 Q. Did you also weigh in on that as to whether the children
12 would be in danger if their mother lived with them?

13 A. Yes, I did.

14 Q. And what was your opinion?

15 A. I felt the children were safe in her care.

16 Q. Are you aware that a criminal complaint was filed
17 against Ms. Merrell in Washington County?

18 A. Yes.

19 Q. And was everyone in the CHIPS case made aware of that
20 parallel criminal case?

21 A. I am almost certain, yes. I am pretty sure, yes.

22 Q. Now, has your opinion as to whether Ms. Merrell's
23 children would be in danger living with her changed at all
24 since the time that she was allowed to move back in?

25 A. No.

1 Q. Has the County Attorney ever objected to her living back
2 with her children?

3 A. No.

4 Q. Has the child protection worker from Washington County
5 Social Services ever made any objection to her living back
6 with the children?

7 A. No.

8 Q. When you write your report and make your recommendations
9 to the Court, is there an opportunity for any party to
10 object to your report and recommendation?

11 A. Yes.

12 Q. And has anyone ever objected to your recommendation as
13 far as the living arrangements with Ms. Merrell and her
14 children?

15 A. No.

16 Q. In addition to having contact with the children, have
17 you also had contact with Ms. Merrell?

18 A. Yes.

19 Q. Have you formed any opinion as to whether or not she is
20 likely to runaway or flee from these court proceedings?

21 A. Yes.

22 Q. What is your opinion?

23 A. I feel she has no interest in leaving. Her whole life
24 is here. Her children are here. She has no money to leave.
25 She has nowhere to go. She is cooperating with Community

1 Services. And she knows that would mean she wasn't
2 cooperating and she doesn't want to do that. I think she
3 finds the services helpful.

4 Q. And you talked about services and I think you and I had
5 talked beforehand about this MTS therapy that she is
6 participating in?

7 A. Yes.

8 Q. Could you inform us as to what MTS stands for?

9 A. It is multisystemic family therapy. And it is offered
10 through Community Services in Washington County. And it is
11 only offered through Community Services when there is a
12 CHIPS Petition. And it is to help alleviate having to
13 remove children from the home. It is very intensive.

14 Q. How did it come about that Ms. Merrell and her family
15 had been participating in the MTS therapy?

16 A. I believe it was recommended through the parenting
17 assessment that it would be helpful for them to have family
18 therapy, and this was an intensive program offered through
19 Community Services. And so the social worker took advantage
20 of that opportunity. Cassandra Lee is the therapist of the
21 family.

22 Q. Is that in-home therapy that Ms. Lee provides?

23 A. Yes.

24 Q. So she goes to the residence in Cottage Grove and meets
25 with Ms. Merrell and her children as needed?

1 A. Yes.

2 Q. Now, having worked with the children for -- what, 7, 8
3 months?

4 A. Yes, since the beginning of the petition, since April.

5 Q. Do you have an opinion as to whether the children are in
6 danger at all with Ms. Merrell living with them?

7 A. Yes, I do.

8 Q. What is that opinion?

9 A. Well, being that I get to know them better and better as
10 time goes on, I feel more and more sure that the children
11 are not unsafe with her. Actually, they lean on her. There
12 is a very strong bond. The parenting assessment referred to
13 that. She provides for their needs.

14 I watch them talk to her. They want things from
15 her. They enjoy being with her. It is a very good
16 situation for them. It is what they know and who they love.

17 Q. Do you have an opinion as to whether it would be in the
18 best interest of Child A to have her mother removed from the
19 home and have no contact with her?

20 A. Yes, I do.

21 Q. What is that?

22 A. I think that would be very damaging for this child.

23 When I first went out, I went to meet her without her
24 knowing I was coming to school. And she was afraid of me at
25 first. She thought, oh-oh, it is someone coming to take me

1 away. And I told her who I was and what I did. And she
2 said, "Oh," she said, "the worst thing that ever happened to
3 me was I was put in a foster home. I have never been in a
4 foster home."

5 So, she was afraid at first. But now she knows me
6 and she is not. As time goes on, I see Ms. Merrell being
7 interested in the services, really liking the in-home
8 therapy. I talked with Cassandra Lee on October 7th, and
9 she said that Ms. Merrell was fully engaged, you know, they
10 go out about twice a week. So, I think it is a very good
11 thing.

12 Q. And Ms. Lee is a therapist through the multisystem
13 family therapy group, is that right?

14 A. Yes, yes.

15 Q. And do you have an opinion whether it would be in the
16 best interest of Child C if his mother was removed from the
17 home?

18 A. Well, I went to see Child C at school, also, the first
19 time, and he was very fearful of me. They are both
20 traumatized by the fact that they were placed in foster
21 care. They were still upset when they got to go back to
22 grandmother's house, but their mother could not be there.
23 They were just totally relieved to have her come home.

24 There is a strong bond here, so I think it would
25 be very damaging for both of the children not to be with

1 their mother.

2 Q. And you base that opinion on your training and
3 experience as guardian ad litem and in your capacity
4 representing those children?

5 A. Yes, and I also talked with the parenting assessor.

6 Q. And so the parenting assessment has been done on Ms.
7 Merrell, is that correct?

8 A. Yes.

9 Q. Was that done in the summer?

10 A. Yes, it was.

11 Q. And there have been court appearances since that time,
12 is that correct?

13 A. Yes.

14 Q. And am I correct that the next review hearing in the
15 CHIPS proceeding is scheduled for sometime in January?

16 A. I believe that is right.

17 Q. And in your opinion, has Ms. Merrell followed through
18 with what has been requested of her by Community Service
19 child protection workers?

20 A. Yes.

21 Q. And do you have an opinion as to what the result would
22 be if Ms. Merrell was ordered not to have any contact
23 whatsoever with Child A?

24 A. I think it would be a huge, huge setback for her. I am
25 sure there has been a setback just from her mother being in

1 jail right now. There is a bond there. And because of the
2 issues Child A has, I think she is dependent on her mother
3 for help. And to have her not there is very disturbing to
4 her. And I think it would hold her back. I think it would
5 leave a scar.

6 Q. Could you just elaborate a little bit on the issues that
7 you -- that Child A has?

8 A. She has ADHD. She also has anxiety. She has PTSD. I
9 know she has -- if I can say the word, trichotillomania.
10 But, it turns out to be, it is anxiety-based and she will
11 pull out her eyebrows and her eyelashes when she is
12 stressed.

13 Q. Does she have an Individualized Education Plan?

14 A. Yes, she does.

15 Q. Does that require participation by parents, as well as
16 educators?

17 A. Yes, parents are involved.

18 Q. Have you been involved with the school with her IEP at
19 all?

20 A. Not with her IEP, that was already set up when I came on
21 board.

22 Q. When you talked about some of these issues that she has,
23 ADHD, anxiety, PTSD, in your opinion, are these all related
24 or at all related to Ms. Merrell's conduct with respect to
25 the photographing?

1 A. No, Child A has had these for a number of years, many
2 years. Since young childhood, I believe.

3 MS. ELLIS: Thank you. I have no further
4 questions, Your Honor.

5 THE COURT: All right, Ms. Buzicky?

6 MS. BUZICKY: Yes, Your Honor.

7 **CROSS EXAMINATION**

8 **BY MS. BUZICKY:**

9 Q. Good morning, Ms. Robbins, how are you today?

10 A. I am fine, thank you.

11 Q. I have a few questions relating to your testimony here
12 today and also to the reports that you created as a part of
13 your guardian ad litem duties.

14 A. Uh-huh.

15 Q. First things first. When you provide these reports from
16 my reading of them, you actually go into the home. Is that
17 correct?

18 A. Yes.

19 Q. And so you are aware that eight people are living in a
20 home of about 800 square feet?

21 A. Yes.

22 Q. And you are aware that both Minor A and Minor C do not
23 have bedrooms?

24 A. Yes.

25 Q. They do not really even have beds, is that correct?

1 A. They have couches.

2 Q. They have couches. And that the Defendant sleeps on a
3 chair or a modified chair, correct?

4 A. Yes.

5 Q. And so the children are in fact not given any real
6 measure of privacy because the living room where they are
7 living is a communal area that is accessible to anyone in
8 the home?

9 A. Yes.

10 Q. And you are aware the home is in disarray and the smell
11 of some sort of animal litter or cat litter in the home?

12 A. I have not smelled any odors.

13 Q. And with respect to the state of the cleanliness of the
14 home, you have seen that it is not a clean home; is that
15 correct?

16 A. I have seen that there is clutter.

17 Q. Now, regarding your testimony relating to the bond
18 between the children, Minor A and Minor C and the Defendant,
19 have you had experience in cases other than this involving
20 sexual abuse?

21 A. Yes, I have.

22 Q. And so you are familiar, are you not, that many abusers
23 use love, affection, regard, special interest, as a means to
24 get to a child; don't they?

25 A. Yes.

1 Q. And many children who are abused by adults are actually
2 loving or even sometimes in love with their abuser?

3 A. Yes, they love them.

4 Q. And they rely on their abuser because that abuser has
5 given them special attention and special favors, is that
6 correct?

7 A. I don't believe so in this case; but I think, yes, as a
8 general rule that has happened.

9 Q. So that perception of a child abuser as a scary person
10 with a scary, broken-down van is actually sort of a false
11 stereotype; isn't that correct?

12 A. Usually people know their abuser.

13 Q. Usually they know their abuser and have daily or weekly
14 access to their abuser because that is a family or
15 friendship relationship; isn't it?

16 A. Yes.

17 Q. Now you testified regarding your understanding of the
18 sexual abuse in this case, and you said that there was a
19 picture of a child, Minor A, and it was from the neck down.
20 In other words, no face; is that correct?

21 A. That is what I was told.

22 Q. And in fact, you are not aware of the entire scope of
23 the child pornography there is in this case, then, are you?

24 A. Not entirely, no.

25 Q. So you are not aware that there were actually about

1 eight images, are you?

2 A. My understanding, I thought, was two.

3 Q. Now, to clarify and for the benefit of the Court, two
4 images are charged in this case.

5 A. Oh.

6 Q. But there are actually about eight images that the
7 Defendant is alleged to have created.

8 Now, have you seen any of those images?

9 A. No.

10 Q. And so you are not aware that one of those -- or two of
11 those images that are charged in this case actually depict
12 hands-on abuse by the Defendant, are you?

13 A. I was told that there was.

14 Q. And so do you know that in those pictures the
15 Defendant's hands are alleged to be spreading the vaginal
16 lips of this little child apart and a close-up picture has
17 been taken of the child's genitalia?

18 A. I was told that by Community Services.

19 Q. And those pictures were sent to a sex offender named
20 Travis Guenthner, were you aware of that?

21 A. I didn't know his name, but I knew it was a person that
22 Ms. Merrell knew.

23 Q. And that he had special ordered pictures, naked and
24 below the waist, of this child. Did you know that?

25 A. I didn't know of his specific requirements I knew

1 pictures were given and.

2 Q. And you knew the Defendant did this in the expectation
3 of money, didn't you?

4 A. Yes.

5 Q. And did you know how much money that was to be?

6 A. I believe she was promised 4 or \$5,000 that never
7 materialized.

8 Q. Are you aware that the Defendant said that there was
9 \$5,000 promised, but Travis Guenthner claims that there were
10 \$100,000 promised?

11 A. I never heard that.

12 Q. Now, you mentioned that there had been follow through by
13 the Defendant relating to the plans in place in Washington
14 County, is that correct?

15 A. Yes.

16 Q. But, you are also aware that the Defendant was
17 recommended to put Minor C in summer school and didn't do
18 that, in fact; aren't you?

19 A. Yes.

20 Q. And that she claimed that she had some sort of dispute
21 with his teacher and that is why Minor C didn't go to summer
22 school, is that correct?

23 A. I believe that was it, that she was hoping it would be a
24 different teacher. I don't know who ultimately was doing
25 summer school, but she chose not to send him.

1 Q. Now you are talking about the number of people who are
2 involved in the protection and supervision of this family.
3 And you mention in your report a psychological evaluation.
4 Do you recall seeing documents related to a psychological
5 evaluation of Minor A?

6 A. Yes.

7 THE COURT: Do you want to tell us which report
8 you are referring to, what the date of it is?

9 MS. BUZICKY: Oh, certainly. This is a GAL report
10 that is dated July 8th, 2014, Your Honor.

11 THE COURT: All right.

12 MS. BUZICKY: And it is on page 3 towards the
13 bottom third of the report, the witness mentions, there is a
14 paragraph regarding a psychological evaluation of Minor A.

15 THE COURT: All right.

16 MS. BUZICKY: Now, that report --

17 THE COURT: Let me make sure. Do you have a copy
18 of that report in front of you?

19 THE WITNESS: Yes I do.

20 THE COURT: Go ahead.

21 BY MS. BUZICKY:

22 Q. Now that report is by a psychologist, is that correct?

23 A. Doctoral intern.

24 Q. Doctoral intern. And that professional recommended that
25 Minor A was not to have any contact with the Defendant other

1 than supervised contact, is that correct?

2 A. Yes.

3 Q. And that she be placed in a therapeutic foster home, is
4 that correct?

5 A. Yes.

6 Q. And that that psychologist stated that Minor A is at
7 continued risk for emotional neglect by her mother, a lack
8 of attachment between Ms. Merrell and Minor A, and the
9 Defendant's inability to empathize with Minor A. Were you
10 aware of those findings?

11 A. Yes, I read that.

12 Q. And so it is not quite correct that everybody involved
13 in this case is interested in seeing reunification, is that
14 correct?

15 A. The doctoral intern was not.

16 Q. One final question for you. Is it your understanding
17 that the goals of the guardian ad litem program are, when
18 possible, to reunify families?

19 A. No, our goals are to always make the best
20 recommendations for the children, whatever that means.

21 Q. And that is quite different from criminal prosecution,
22 isn't it?

23 A. Yes.

24 MS. BUZICKY: No further questions, Your Honor.

25 THE COURT: All right. Ms. Ellis, any follow-up?

REDIRECT EXAMINATION

BY MS. ELLIS:

Q. You mentioned a doctoral intern. Who is the doctoral intern?

A. I believe her name was Emily Kanter, K-a-n-t-e-r, I think.

Q. Is she the one who prepared the parenting report?

A. No, Mary Maguire from Adler Center did the parenting assessment. Emily Kanter was from Kansas Health and she did Child A's psychological evaluation.

Q. And she did that in -- before your July report, is that correct?

A. I think so, yes.

Q. And since that time you have been to court a couple of times, is that right?

A. Right.

Q. You have been in July and you have been in August and maybe even --

A. September -- I mean, October.

Q. October. Okay, so three other times. Did anyone else support the recommendation of the intern?

A. No. I did not as guardian ad litem. Child Protection and the County Attorney did not. I called the Parenting Assessor Mary Maguire. She did not support the recommendation. And so the Judge went with our

1 recommendations over the psychologist's recommendation.

2 Q. So, the psychologist that recommended that she be --
3 that there be some separation between Child A and the mother
4 was not supported by any of the other lawyers, guardian ad
5 litem or social workers; is that right?

6 A. Not that I know of, no.

7 Q. And that report was made available to the Judge in
8 Washington County, is that right?

9 A. I don't know what the Judge saw, the psychological -- I
10 mean, I know it was discussed that their recommendation was
11 different than everybody else's.

12 Q. And the Judge did not change or order anything different
13 than what had been in place prior to that report, correct?

14 A. The Judge ordered what Community Services was
15 recommending.

16 Q. Which is that -- the therapy, the MTS therapy?

17 A. Yes. Recommended, yes.

18 Q. And have you -- you said that you have had experience
19 with other cases involving sexual abuse, and that the abuser
20 might try and cozy up to a possible victim; is that right?

21 A. Yes.

22 Q. Have you seen any evidence in this case that Ms. Merrell
23 at all is taking any action to groove or be a predator to
24 either of her children?

25 A. No.

1 Q. The children have contact with their father, is that
2 correct?

3 A. Yes.

4 Q. He lives out of state?

5 A. Yes.

6 Q. But he comes to visit a few times a year?

7 A. Several times, yes.

8 Q. And he was here recently, is that right?

9 A. I think he was here late summer.

10 Q. They also have phone contact with him, correct?

11 A. Yes.

12 Q. They also have access to a number of school
13 professionals, is that right?

14 A. Yes.

15 Q. And child protection is involved?

16 A. Yes.

17 Q. Now, with respect to Child C, and the summer school
18 program, was that essentially worked out with the school and
19 Ms. Merrell as to how to improve Child C's reading level?

20 A. Yeah, they thought it would be helpful, but I don't
21 remember the Judge ordering it, specifically.

22 And so, yeah, the school felt that Child C was
23 having some difficulty with his reading.

24 Q. Because he had changed schools, is that right, a few
25 years earlier?

1 A. Yes, right, several years earlier.

2 Q. And his reading level had dropped somewhat?

3 A. Right. The teacher told me it was comprehension she saw
4 him having a problem with.

5 Q. And this was a subject that was addressed in a hearing
6 in the CHIPS proceeding before Judge Schurrer, is that
7 correct?

8 A. Yes.

9 Q. And am I correct that it is Gary Schurrer who has
10 presided over the CHIPS proceedings for the last several
11 months, maybe from the very beginning?

12 A. Yes.

13 Q. And if the children felt in any way that they were being
14 threatened, endangered, or abused, do they have adults in
15 their life that they could contact?

16 A. Numerous.

17 Q. Thank you. No further questions.

18 THE COURT: Thank you. Ms. Buzicky, anything
19 further?

20 MS. BUZICKY: No, Your Honor.

21 THE COURT: All right, you may step down. Thank
22 you very much.

23 THE WITNESS: Am I allowed to leave, Your Honor?

24 THE COURT: Yes, you are.

25 THE WITNESS: Thank you very much.

1 (Witness excused.)

2 THE COURT: Ms. Ellis, any further evidence that
3 you wish to put on on behalf of your client?

4 MS. ELLIS: No, Your Honor.

5 THE COURT: All right. Then again, I will hear
6 arguments from Counsel in light of the evidence that was
7 provided to me over the course of several days and the
8 testimony of the witness, and also the legal issues that
9 were raised in the briefs that were provided by counsel. We
10 will go ahead and start with the Government.

11 MS. BUZICKY: Your Honor, the United States is
12 seeking detention in this case as outlined in our motion and
13 in our supplemental briefing, relating to the Adam Walsh Act
14 conditions. I would like to first briefly address the issue
15 of the Adam Walsh Act conditions.

16 Our briefing, I believe, has sufficiently
17 established that the Adam Walsh Act conditions are in fact
18 mandatory and the Court does not have discretion to either
19 limit or modify the condition regarding no contact between
20 an alleged victim and a defendant.

21 THE COURT: Let me just ask a question. Ms. Ellis
22 in her responsive brief raises the issue that if this Court
23 were to conclude under 3142 that Ms. Merrell could be
24 released on her own personal recognizance or an unsecured
25 bond with no other conditions, that therefore Subsection (c)

1 of 3142 which lays out the -- which addresses, among other
2 conditions, the Adam Walsh conditions, doesn't kick in. And
3 so, it has no application under those circumstances.

4 As I understand what she was saying, it only would
5 apply and be mandatory if I concluded that the Defendant
6 could not be released under her own personal recognizance or
7 an unsecured bond.

8 MS. BUZICKY: Your Honor, I think the language of
9 the statute is clear that in any case that involves a minor
10 victim, and then it lists a number of sections including the
11 Section 2251 production of child pornography, any release
12 order shall contain at a minimum the condition of no
13 contact.

14 And so if you look at the scope of release orders,
15 those are release orders spanning from the personal
16 recognizance all the way up to the most restrictive release
17 order, say a halfway house with very incarcerative
18 conditions. Any release order means any release order. And
19 I think our District favors a plain reading of the statute,
20 because it is clear.

21 With respect to the argument for detention, the
22 United States continues to seek detention in this case.
23 This case is among the small subset of cases that are
24 brought in this District where a physical child known to all
25 of the parties and identified to the Court has been

1 physically abused and images or videos have been created, in
2 this case a series of images. And in this case the
3 egregious additional fact that these were created for money,
4 that this is an example of somebody who has a psychological
5 disorder or deficit of pedophilia, or some other paraphilia
6 where they are literally in their mind driven to sexually
7 abuse a child.

8 This is a person who is supplying those people for
9 money. So, it is a cold and calculating act for money that
10 cannot even be explained by a psychological disease or
11 deficiency such as pedophilia.

12 Your Honor, in this case detention is the only
13 appropriate situation for the Defendant because she poses a
14 risk to other people in the community. And I would point
15 the Court to a number of things that are in the documents
16 that the probation officer had supplied, records of
17 dangerous conditions for Minor A going back to infancy,
18 including a Cottage Grove report from 2001, where a child,
19 infant child Minor A is described as being surrounded by
20 alcohol bottles in a smoke-filled room as parents are
21 arguing and becoming physically violent with each other
22 continuing all the way up to the present day where Minor A
23 and Minor C are living with six other people in an
24 800-square-foot house.

25 Your Honor, the egregiousness of creating child

1 pornography for pay is just one factor in this case. The
2 Defendant is a danger to others in the community and the
3 Defendant should be detained. Thank you.

4 THE COURT: All right, Ms. Ellis?

5 MS. ELLIS: Your Honor, we ask that Ms. Merrell be
6 released on her personal recognizance or an unsecured bond.
7 That is required under Section 3142 of Title 18, unless the
8 Court determines that it will not reasonably assure her
9 appearance that she is going to flee or that she endangers
10 the safety of others or the community. And I think that the
11 testimony today and the fact that these allegations have
12 been known to everyone since at least March -- there have
13 been two proceedings in State Court -- the allegations have
14 not changed. I have included a copy of the criminal
15 complaint from Washington County with my responsive
16 memorandum.

17 I mean, regardless of how it gets characterized as
18 to how horrible it was four and a half years ago, there has
19 been absolutely no evidence. And I believe that the
20 Homeland Security agent who has been involved since at least
21 March who testified there is no evidence that there has been
22 any other misconduct, abuse, physical, sexual, toward Child
23 A, or anyone else.

24 And so, I think that there is no basis by which to
25 find that Ms. Merrell is a flight risk. She has made all of

1 her court appearances. She wasn't even required to post
2 bail or subjected to any conditions in Washington County.
3 She responded to a notice that came in the mail.

4 As far as endangerment, this is four and a half
5 years ago. This guardian ad litem who is charged with
6 looking out for the best interests of the child has clearly
7 stated that Child A is going to be more traumatized and
8 scarred. Child A did not even realize that this event had
9 occurred back in 2010. And now her mother would be taken
10 away from her and removed from the home. It is draconian.

11 I acknowledge that the Adam Walsh Act imposes some
12 very severe penalties for acts that are proscribed, but it
13 does not require that she be detained or that any of those
14 conditions that are outlined in (c), those subparagraphs of
15 (iv), (v), (vi) and (vii) of the smaller Roman numerals be
16 applied unless the Court can find that she is a flight risk
17 or will endanger someone else in the community.

18 And, as far as whether the house is in disarray,
19 this Court can't really change the living conditions for the
20 children. There is nothing to suggest that they are in
21 harm's way or that Ms. Merrell has done anything to endanger
22 her children. And I would urge the Court not to endanger
23 Child A or C by removing their mother from them. And in an
24 alternative to detention, which they have asked for, I would
25 ask the Court to at least consider a placement in a halfway

1 house and not restrict the contact with the children because
2 it is going to disrupt some very intense therapy.

3 This MTS therapy, which I had talked to the child
4 protection worker about yesterday said it is the most
5 intense therapy that they have. And they were fortunate to
6 be able to arrange it and to restrict this family from
7 continuing in therapy, regardless of what the charges are
8 and what the potential penalties are.

9 We are not locking people up for life based on
10 allegations or even on convictions. And this family has
11 a -- has a bond that the federal prosecutors I think are off
12 base in trying to disrupt and to punish some innocent
13 children. Thank you.

14 THE COURT: All right. Having considered the
15 evidence that was presented to me last week and the evidence
16 that was presented here today, the various documents that
17 were provided to me from the State Court proceeding, taking
18 into account the arguments of counsel, the briefing by
19 counsel, I am going to deny the Government's Motion For
20 Detention.

21 However, I am going to be issuing an order setting
22 conditions of release that I will go over with Ms. Merrell
23 and then request that Ms. Ellis review with Ms. Merrell as
24 well. That is the general overview.

25 That said, I am concluding that under no set of

1 circumstances does Ms. Merrell qualify for release under 18
2 U.S.C. Section 3142(a)(1) or (b), which would allow for her
3 release on a personal recognizance or unsecured appearance
4 bond. There is no basis. And I would not release her under
5 those circumstances, as I do find that conditions must be
6 put in place to reasonably ensure the safety of the
7 community and also the safety of other persons, and
8 including Ms. Merrell, herself. So, I do conclude that
9 3142(b) will not apply here and that, rather, I will be
10 subjecting her to a combination of conditions under 3142(c),
11 which will include as mandated by the Adam Walsh Act that
12 she have no contact with the Minor Victim A, which we have
13 called Minor A during the pendency of this Federal Court
14 proceeding.

15 I reach the conclusion I do, first of all, because
16 the presumption is, Ms. Merrell, that in fact you would be
17 detained. That is the starting place. And then the
18 question is whether I believe that evidence has been
19 presented that would allow me to release you under certain
20 conditions, a combination of conditions that would
21 reasonably ensure the safety of other persons, including
22 yourself, and also your continued appearance here in court.

23 I have concluded the presumption has been
24 overcome, but not to the extent of releasing you on a
25 personal recognizance, under your own personal recognizance,

1 or simply an unsecured bond. The only way that I can ensure
2 the safety of yourself and other persons is to require a
3 host of conditions that you must comply with, many of which
4 are part of the State Court proceedings where you are
5 required to, by Court Order, to follow certain
6 recommendations and requirements that they have set forth.

7 So, once Section 3142(c) is triggered, that act is
8 mandatory. It does require that the Adam Walsh Subsections
9 (iv) through (viii) be incorporated into any release, and
10 that includes avoiding all contact with the alleged victim
11 which would be Minor A, with any potential witness who may
12 testify concerning the offense.

13 So, with that, I have concluded that I will be
14 placing Ms. Merrell in a halfway house. She will be
15 prohibited from having any contact with Minor A. She will
16 be permitted to have contact with Minor C and other
17 children, so long as she is in the presence of a responsible
18 adult who is 18 years or older. So -- and then there are
19 other conditions I am going to be putting in place.

20 So, at this time I am going to review the Order
21 setting conditions of release with Ms. Merrell. And then
22 when I am done, I am going to ask if you will comply with
23 them. If you agree that you will comply with them, I will
24 then ask Ms. Ellis to actually review this Order with you so
25 you can see it in black and white and you can see the

1 sanctions and penalty sections that would be brought to bear
2 against you if you were to violate any term or condition of
3 the Order.

4 Do you understand, Ms. Merrell?

5 THE DEFENDANT: Yes.

6 MS. BUZICKY: Your Honor? May I respectfully seek
7 a 24-hour stay of this Order so that we can decide whether
8 or not we wish to seek review at the District Court level?

9 THE COURT: No. She will be released to a halfway
10 house. You certainly are free to -- and I understand there
11 is a placement available today. I am not going to stay the
12 effect of the Order. The Government certainly has the
13 option of appealing the Order, as does the Defendant. And
14 then you can proceed with that.

15 If Judge Doty disagrees with my finding, whether
16 he would deem that she should be detained or whether he
17 deems she shouldn't be placed in a halfway house. Should
18 the Defendant appeal it, that will be the time for action at
19 that time. I will not stay the impact of this Order.

20 MS. BUZICKY: Yes, Your Honor.

21 THE COURT: All right. It is ordered that the
22 Defendant is released, subject to the following conditions.
23 Number one, you must not violate any federal, state, or
24 local law while on release.

25 Number two, you must cooperate in the collection

1 of a DNA sample if it is authorized by 42 USC Section
2 14135a.

3 Number three, you must advise the Court or
4 Pretrial Services Office or your supervising officer in
5 writing before you make any change of residence or phone
6 number.

7 Number four, you must appear in court, as
8 required, and if convicted you must surrender as directed to
9 serve a sentence as the Court may impose.

10 Number five, you must sign an appearance bond, if
11 ordered, and I will be requiring that you sign an unsecured
12 bond in the amount of \$25,000 which requires that you appear
13 in court proceedings. If convicted, that you must surrender
14 to serve a sentence that the Court may impose, and to comply
15 with all conditions set forth in the Order setting
16 conditions of release.

17 The next condition is that you must submit to the
18 supervision by and report for supervision to the Probation
19 and Pretrial Services Office. The phone number is provided
20 here in this Order, and you must make contact at that number
21 by tomorrow.

22 You must continue or actively seek employment.
23 You must abide by the following restriction on your travel.
24 Travel is restricted to the state of Minnesota unless
25 pre-approved by the United States Probation Officer.

1 You must avoid all contact directly or indirectly
2 with any person who is or may be a witness in the
3 investigation or prosecution including, and I am referring
4 to your daughter, minor daughter, as Minor A in this Order.

5 The next condition is you must comply with all
6 recommendations for your psychological -- that flow from
7 your psychological and psychiatric evaluations.

8 The next condition is you must maintain a
9 residence at a halfway house as the supervising officer
10 considers necessary. And I am requiring that you be in a
11 halfway house. The next condition is you must not possess a
12 firearm, destructive device or other weapon.

13 The next condition is you must not use alcohol
14 excessively.

15 The next condition is you will be subject to the
16 following restrictions on your ability to leave the halfway
17 house. You are restricted to the residence, the halfway
18 house, at all times except for employment, education,
19 religious services, medical substance abuse or mental health
20 treatment, attorney visits, court appearances, Court-ordered
21 obligations, or other activities approved in advance by the
22 Pretrial Services Office or your Pretrial Services Officer.

23 The next condition, you must submit to location
24 monitoring as directed by the Pretrial Services Officer,
25 your supervising officer, and comply with all of the program

1 requirements and instructions provided. You will be subject
2 to GPS electronic monitoring.

3 The next condition is you must report as soon as
4 possible to the Pretrial Services Office or your supervising
5 officer every contact you have with law enforcement
6 personnel, including arrest, questioning or traffic stops.

7 The next condition is you must follow all
8 Court-ordered recommendations and requirements of the
9 Washington County Court. The next condition is you must
10 follow all recommendations of the Washington County Guardian
11 Ad Litem Program.

12 The next condition is you must agree to release
13 all reports of the Washington County Court Services, Child
14 Protection and Guardian Ad Litem Program to the United
15 States Probation Office.

16 The next condition is that in the event the
17 guardian ad litem recommends that Washington County
18 jurisdiction ends, you must notify your United States
19 Probation Officer of this recommendation.

20 The next condition is you shall not possess a
21 computer or use a computer or have access to any online
22 service without prior approval of the United States
23 Probation and Pretrial Services Office. Your cooperation
24 shall include, but is not limited to installing,
25 installation of a computer or internet monitoring program,

1 or identifying computer systems, internet capable devices
2 and similar memory and electronic devices to which you have
3 access.

4 Monitoring may include random examinations of
5 computer systems along with internet, electronic and media
6 storage devices under your control. The computer systems or
7 devices may be removed for a more thorough examination, if
8 necessary. And you shall contribute to the cost of such
9 monitoring services based on your ability to pay as deemed
10 appropriate by the U.S. Probation and Pretrial Services
11 Office.

12 The next condition is you shall refrain from
13 accessing that matter which relates to the activity in which
14 you were engaged in committing the alleged instant offense,
15 namely child pornography.

16 The next condition is you shall provide to the
17 probation officer access to any requested financial
18 information, including credit reports, credit card bills,
19 bank statements and telephone bills. The next condition is
20 you shall not associate with persons under the age of 18,
21 except in the presence of a responsible adult who is aware
22 of the nature of your background and current offense and has
23 been approved by the probation officer.

24 The next condition is you shall submit your
25 person, residence, office, vehicle or area under your

1 control to a search conducted by the United States Probation
2 Office or a supervised designee at a reasonable time in a
3 reasonable manner based upon reasonable suspicion of
4 contraband or a supervision violation. You shall warn any
5 residents or third parties that the premises and areas under
6 your control may be subject to searches pursuant to this
7 condition.

8 The next condition is you shall not possess, view
9 or access pornography or other explicit images. You shall
10 not own, possess or use photographic or video equipment, a
11 camera, phone or other electronic device which can be used
12 for covert photography without prior permission of your
13 probation officer.

14 Finally, you shall not rent a post office box or
15 storage facility without the prior approval of your
16 probation officer. And before I ask if you are willing to
17 comply with these conditions, Ms. Merrell, I do want you to
18 know that at the halfway house you are going to be subject
19 to a number of terms and conditions there. They are
20 regulations that are not itemized here. I want you to know
21 that if you violate any of their regulations, terms and
22 conditions, those violations can trigger a violation of the
23 Order setting conditions of release. It can lead to them
24 terminating their relationship with you, meaning requiring
25 that you leave the halfway house. I will not have another

1 halfway house to place you in. So that, in and of itself,
2 could create a violation of this Order. So, I want you to
3 be aware of it. They have very strict rules and regulations
4 for you to follow.

5 With that said, do you agree to comply with the
6 Order setting your conditions of release?

7 THE DEFENDANT: Yes.

8 THE COURT: Pardon?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Then, Ms. Ellis, if you
11 could come up to the podium?

12 MS. BUZICKY: Your Honor, I apologize for
13 interrupting.

14 THE COURT: If you could come over to the -- so we
15 can make sure we can hear you?

16 MS. BUZICKY: Your Honor, I note that you ordered
17 compliance with the guardian ad litem recommendations, and
18 it appears at least from my reading of some of those
19 recommendations they would conflict with the Adam Walsh
20 conditions of no contact between Minor A and the Defendant.

21 So, I just ask that there will be a sentence
22 inserted in your Order that those conditions be complied
23 with so far as they do not conflict with this Court's Order.

24 THE COURT: I think that is a good request. Any
25 response to that, Ms. Ellis?

1 All right, then before you come up, Ms. Ellis, to
2 take a copy of this, let me add that language.

3 All right. Ms. Ellis, do you want to come up to
4 the podium? If you would review the Order and bond with
5 your client. Make sure she is aware of the sanctions and
6 penalty section of the Order. And when she is done
7 reviewing it with you, if she would sign both the Order and
8 the bond, and I will sign it, as well. We will go off the
9 record.

10 (Adjournment.)
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I N D E X

Defendant's Witness:

GERI ROBBINS

Direct Examination by Ms. Ellis Page 4

Cross Examination by Ms. Buzicky Page 16

Redirect Examination by Ms. Ellis Page 23

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3 CERTIFICATE
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7 The foregoing transcript is a
8 transcription of the digital audio recording that was
9 produced in the above matter by Court staff and later
10 submitted to myself, Jeanne M. Anderson, for transcription.
11 An official court reporter was not present to produce a
12 stenographic and verbatim record of the aforementioned
13 proceeding at the time and place specified herein.
14
15
16

17 Certified by: s/ Jeanne M. Anderson

18 Jeanne M. Anderson, RMR-RPR
19 Official Court Reporter
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